

10 Official Opinions of the Compliance Board 9 (2016)

- ◆ **2(F)(3) NOTICE – VIOLATION – FAILURE TO UPDATE STANDING
NOTICE ON WEBSITE REASONABLY IN ADVANCE**
- ◆ **6(B)(3) MINUTES – VIOLATION – FAILURE TO TIMELY ADOPT**

*Topic numbers and headings correspond to those in the Opinions Index (2014 edition) at http://www.oag.state.md.us/Opengov/Openmeetings/OMCB_Topical_Index.pdf

March 8, 2016

Re: Maryland Bicycle and Pedestrian Advisory Committee
Michael E. Jackson, *Complainant*

Michael E. Jackson, Complainant, alleges that the Maryland Bicycle and Pedestrian Advisory Committee (“MBPAC”) violated the Open Meetings Act in two ways: first, by changing the location of its December 11, 2015 meeting without adequate notice, and, second, by failing to adopt and post minutes in a timely fashion. MBPAC does not dispute its status as a public body subject to the Act. MBPAC, through the Secretary’s Office at the Maryland Department of Transportation, has pledged to change its practices to address both concerns.

A. Notice

The Act requires public bodies to provide “reasonable advance notice” of the date, time, and place of their meetings. § 3-302.¹ The Act does not specify how far in advance notice must be given, and “reasonable[ness]” thus depends on the circumstances. We have advised that “the touchstone of ‘reasonableness’ is whether a public body gives notice of a future meeting as soon as is practicable after it has fixed the date, time, and place of the meeting.” 5 *OMCB Opinions* 139, 143 (2007).

MBPAC posts a standing meeting notice on its website, and, in the ordinary course of events, that notice gives ample notice of the date, time, and place of the meetings that MBPAC holds regularly. As the standing notice shows, MBPAC regularly meets in a conference room at the Maryland

¹ The Open Meetings Act is codified in the General Provisions Act of the Maryland Annotated Code, and references are to the 2014 volume of that article, with the 2015 Supplement.

Department of Transportation headquarters at 9:30 a.m. on the second Friday of every other month. At its October 9, 2015 meeting, however, MBPAC announced that it would hold its next meeting, the December 11, 2015 meeting, not in the conference room at 9:30 a.m., but instead on the southbound MARC train bicycle car on the train that was scheduled to leave the station at 9:41. According to Complainant, the train station is about a ten-minute walk from the Maryland Department of Transportation headquarters. That change was not posted on MBPAC's webpage until December 8, 2015, three days before the meeting, and thus was not posted "as soon as practicable" after MBPAC had changed the location. We therefore find that MBPAC violated § 3-302. MBPAC's response states that it now has a new director and that changes will be posted as soon as known.²

B. Minutes

The Act requires a public body to adopt written minutes, when the public body keeps minutes in that format, "as soon as practicable after [it] meets." § 3-306(b). MBPAC meets every other month and usually adopts minutes at each successive meeting. That did not happen for the minutes of its August and October 2015 meetings. Those minutes, the response states, were not scheduled for adoption until February 2016. We cannot tell from the response what would have been "practicable" for this advisory committee, which, the Complainant states, was undergoing changes in staff. Even so, a six-month delay is too long, as would be a routine delay of four months,³ and so we find that MBPAC's adoption of the October minutes was untimely.

It can be challenging, for public bodies that meet fairly rarely, to adopt minutes in a timely fashion when the method of adoption is a vote in an open meeting. In those circumstances, we have encouraged public bodies to adopt their minutes by other methods; the prompt adoption of minutes serves the Act's goal of transparency and, in our view, outweighs the public's comparatively slight interest in observing the ordinarily routine vote to adopt them. *See, e.g., 8 OMCB Opinions 125, 126 (2013)*. Opinions in which we have discussed alternative methods of adopting minutes include *8 OMCB Opinions 125* and *8 OMCB Opinions 176 (2013)*, and we refer MBPAC to the advice we gave there.

² For a discussion of opinions in which we gave advice about ensuring that standing notices posted on a website comply with the Act, see Chapter 2, §§ A and C of the Open Meetings Act Manual (2015). The manual is posted at https://www.oag.state.md.us/Opengov/Openmeetings/OMA_manual_2015.pdf. The opinions themselves are posted at <https://www.oag.state.md.us/Opengov/Openmeetings/board.htm>.

³ Our opinions on the timing of minutes are summarized in Chapter 6, § 5, of the Open Meetings Act Manual (2015).

Conclusion

We have found that MBPAC violated the Act by not updating its standing meeting notice reasonably in advance of a meeting and not adopting two sets of minutes in a timely manner. We note the references in both the complaint and the response to a turnover in staff, as well as the suggestion in the complaint that these violations are aberrations. We encourage MBPAC and its new staff in their undertaking to disseminate MBPAC's meeting information more promptly.

Open Meetings Compliance Board

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